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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/717,706  | 11/21/2003  | H. Lee Browne        | 02473.0018-02       | 8866             |
| 22852   | 7590        | 08/31/2005           | EXAMINER            |                  |
| FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER<br>LLP<br>901 NEW YORK AVENUE, NW<br>WASHINGTON, DC 20001-4413 |             |                      | FERNSTROM, KURT     |                  |
|   |             |                      | ART UNIT            | PAPER NUMBER     |
|   |             |                      | 3714                |                  |

DATE MAILED: 08/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/717,706

Applicant(s)

BROWNE ET AL.

Examiner

Kurt Fernstrom

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 June 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 37-45 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 37-45 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Inventorship***

In view of the papers filed June 23, 2005 and April 19, 2004, the inventorship in this nonprovisional application has been changed by the deletion of H. Lee Browne.

The application will be forwarded to the Office of Initial Patent Examination (OIPE) for issuance of a corrected filing receipt, and correction of Office records to reflect the inventorship as corrected.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 37-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over O'Leary in view of Hanson. O'Leary discloses in column 4, lines 1-67 a method and system for providing video instruction to a user comprising the steps of capturing a real-time signal of a user engaged in a physical activity via video cameras 14A and 14B, generating information related to the physical activity (outline images of a master performing a correct golf swing, described in lines 57-63), and combining the real-time signal and the generated information to display to the user in real time. O'Leary fails to disclose that the instructional signal is presented in a manner that allows a user to view

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the signal while performing the activity. Hanson discloses in Figures 1-3 and in the specification a method of providing an instructional signal comprising a head mounted display 14 which projects the signal onto the eyes of the user, such that the user may view the instructional signal while performing a physical activity. It would have been obvious to one of ordinary skill in the relevant art to modify the device and method disclosed by O'Leary by providing a head mounted display for the purpose of projecting an image directly onto the eyes of the user, thus allowing the user to more easily view the signal while performing a physical activity. With respect to claim 38, O'Leary discloses the use of a computer to generate the information. With respect to claims 41 and 44, the signal and information of O'Leary are viewable at the same time by the user. With respect to claim 42, the VOG as described in O'Leary acts as a mixer.

Claim 45 is rejected under 35 U.S.C. 103(a) as being unpatentable over O'Leary in view of Hanson, and further in view of Security CCTV: "Point-of-Sale Monitoring Downsizes for Small Venues" ("Security"). O'Leary as viewed in combination with Hanson discloses all of the limitations of the claim with the exception of the step of obtaining real-time information, which is then combined with the real-time signal. Security discloses a method comprising the steps of receiving a real-time signal associated with a user performing a physical activity (in this case, operating a cash register), obtaining real time information from a processor (register data) and combining the two into a signal which is sent to a display in real time. Security further discloses at the bottom of column 2 that the signal may be used for instructional purposes, including "training or constructive criticism." It would have been obvious to one of ordinary skill in

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the relevant art to modify the device and method disclosed by O'Leary as viewed in combination with Hanson by obtaining and presenting real-time information with the signal for the purpose of providing additional information with the instructional signal.

### ***Response to Arguments***

Applicant's arguments with respect to claims 37-45 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kurt Fernstrom whose telephone number is (571) 272-4422. The examiner can normally be reached on M-F 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jessica Harrison can be reached on (571) 272-4449. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

KF  
August 25, 2005

  
**KURT FERNSTROM**  
**PRIMARY EXAMINER**